

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0113P**

Motor Fuel Tax
For the Period of November 2005

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gasoline Tax – Disallowance of Gasoline Distributor Deduction

Authority: IC 6-6-1.1-705

The taxpayer protests the disallowance of the gasoline distributor deduction on its consolidated gasoline monthly tax return for November 2005

II. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalty assessed for failure to remit its tax due for the month of November 2005 by the due date.

STATEMENT OF FACTS

The taxpayer filed its consolidated gasoline tax return for the month of November 2005 in a timely manner. However, the tax due as determined by the return was remitted after the due date. Accordingly, the department disallowed the gasoline distributor deduction and assessed a penalty for the taxpayer's failure to timely remit its tax. In the letter of protest, the taxpayer requested that the gasoline distributor deduction be restored and the penalty be abated due to reasonable cause.

I. Gasoline Tax – Disallowance of Gasoline Distributor Deduction

Indiana Code 6-6-1.1-705 states:

- (a) If a monthly report is filed and the amount due is remitted at or before the time required by this chapter, a distributor is entitled to a deduction equal to one and six-tenths percent (1.6%) of the remainder of:
 - (1) the number of invoiced gallons of gasoline he received in Indiana during the preceding calendar month; minus

- (2) the deductions claimed by the distributor under sections 701 through 704 of this chapter.

This deduction is a flat allowance to cover evaporation, shrinkage, losses (except losses covered by section 301(5) of this chapter), and the distributor's expenses in collecting and timely remitting the tax imposed by this chapter.

- (b) If a monthly report is filed or the amount due is remitted later than the time required under this chapter, the distributor shall pay to the administrator all of the gasoline tax the distributor received from the sale of gasoline covered by the late report, reduced by payments made under IC 6-8.1-8-1.

The taxpayer's gasoline distributor deduction was disallowed because the amount of tax due was remitted after the due date. The statute is clear, and there is no basis for allowing the deduction.

FINDING

The taxpayer's protest is denied.

II. Tax Administration – Penalty

The taxpayer asserts that during November 2005 it moved its checking account from one bank to another. The consolidated gasoline tax return was filed on a timely basis, and the payment of tax was "touch toned" on a timely basis. Unfortunately, the payment was linked to the former bank account in which there were insufficient funds to cover the payment.

The taxpayer points out that the company controller was directed to timely file all appropriate documents in order to avoid such a problem. However, the controller failed to perform his duties as assigned. The taxpayer states that as soon as it became aware of the problem, a bank information change form was transmitted to the department by facsimile. The payment was received by the department on December 28, 2005.

The department considers changing bank accounts to be an activity in the usual course of business. The assertion that the controller failed to fulfill his responsibilities does not establish reasonable cause. The taxpayer is expected to have controls in place to ensure that remittances to the department are made in a timely manner.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department

is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer has not established that its failure to timely remit the tax in question was due to reasonable cause.

FINDING

The taxpayer's protest is denied.

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